

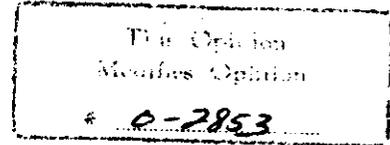


**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WAGGONER GARR  
ATTORNEY GENERAL**

October 16, 1963



Honorable Wallace Shropshire  
County Attorney of Travis County  
Austin, Texas

Opinion No. C-162

Re: The number of sets of  
ballot forms, ballot  
boxes, returns, etc.,  
required for the special  
elections to be held in  
Travis County on November 9,  
1963.

Dear Sir:

You have asked our office for an official opinion on the questions propounded in the following letter which you have received from the Travis County Election Board:

"(1) A proclamation has been issued by the Governor's office calling a Special Election to be held on Nov. 9, 1963 to vote upon certain amendments to the State Constitution.

"(2) A proclamation has been issued by the Governor's office calling a Special Election to be held on Nov. 9, 1963 to elect a Congressman for the 10th Congressional District for the unexpired term of the Hon. Homer Thornberry.

"(3) A proclamation has been issued by the Governor's office calling a Special Election to be held on Nov. 9, 1963 to elect a State Representative for the 55th Representative District, Place 4, for the unexpired term of the Hon. Jack Ritter, Jr.

"(4) Since all of the above Special Elections fall on the same day and since the same General and Special Election officials will handle each of the authorized elections, is it legally permissible and proper under our Election Laws to treat the several matters as one Special Election, with one ballot encompassing the candidates for each of the aforesaid public offices and the Constitutional Amendments, in the same way that a General Election ballot encompasses candidates for office and Constitutional Amendments on the same ballot, same election returns, etc.?"

"(5) Further, a delegation of citizens has heretofore appeared before our County Commissioners' Court and stated their intention of filing a petition to call a Special Election to create a Travis County Junior College District at such a time, that this election would be called for Nov. 9, 1963 also. This petition would call for the following questions to be passed upon by the qualified voters:

- "1. For or Against creating the Junior College District.
2. For an initial Board of 7 Trustees.
3. For or Against the levy of a Maintenance Tax.
4. For or Against the issuance of Bonds. and levying a tax in payment thereof.

"(6) It is conceded that a separate ballot is needed to vote upon items 3 and 4 of paragraph 5. However, if the answer to the question raised in paragraph 4 is in the affirmative, is it then legally permissible and proper under our Election Laws to place items 1 and 2 of the Junior College Special Election, described above, on the same ballot with the Constitutional Amendments and candidates for the offices named herein?"

Each of the above-mentioned elections will be held at the expense of the county. The commissioners court will canvass the returns and the county clerk will have the custody

of the voted ballots in each election. While there is no express statutory authority for holding these elections jointly, it is well established that they may lawfully be held at the same time and place. Att'y Gen. Ops. 0-2853 (1940), 0-6496 (1945), WW-728 (1959). Since the recent amendment of Articles 3.01, 3.02, and 3.08 of the Texas Election Code (Sections 8 and 11 of Chapter 424, Acts of the 58th Legislature, 1963, which became effective on August 23, 1963), it is also clear that all of these elections may be conducted by the same election officers. Att'y Gen. Ops. 0-2853 and 0-6496, supra, and Op. V-1367 (1951).

Only resident qualified electors who own taxable property which has been duly rendered for taxation in Travis County will be eligible to vote on the junior college tax levy and bond issue propositions. Tex. Const. Art. VI, Sec. 3a; V.A.T.S. Election Code, Art. 5.03. On all other matters to be voted on at these elections, all qualified electors of the county will be eligible to vote.

Prior opinions of this office have held that special elections may be conducted at the same time and place as general elections, other special elections, or party primaries, but that they should be conducted as separate elections with separate ballots, ballot boxes, poll lists, etc. There are compelling reasons for requiring that the election supplies and records (either as to some of them or as to all, depending on the nature of the elections) should be furnished and kept separately where the elections are not paid for by the same authority, are not conducted by the same officers, or are not canvassed by the same board, where the qualifications of the voters are different, or where different officers have custody of the voted ballots. All of the prior opinions involve elections where one or more of these factors was present, except Opinion 0-2853, written in 1940, and two later opinions, 0-4872 (1942) and 0-6496 (1946), which cite and follow 0-2853 without further discussion. The elections involved in these three opinions were: the general election for state and county officers and a county-wide local option liquor election (0-2853); the general election and a special election for State Senator (0-4872); a special election on a constitutional amendment and a county-wide special election for tax reallocation (0-6496).

Opinion O-2853 held that the elections could be conducted by the same officers, but that separate ballots should be used and the voted ballots should be deposited in separate ballot boxes, so that in the event of a contest of one of the elections the challenged voters' ballots in the other election would not be subject to exposure. It further held that the poll lists, tally lists, and returns of each election would also necessarily have to be separate and distinct. The opinion recognized that failure to use separate ballots and ballot boxes would not invalidate the election, and that neither election would be invalid if it was otherwise conducted so as to secure a fair and honest election. The reason for requiring that the ballots be kept separate was, therefore, solely for the protection of the secrecy of the ballot.

Your opinion request takes note of the fact that it will be necessary to keep a separate poll list of the persons voting on the junior college tax and bond propositions, and that the ballots must be prepared in such a manner that only those eligible to vote on these propositions will be furnished ballots enabling them to do so. Accordingly, this opinion is limited to the legality and propriety of placing on one ballot form all the other matters to be voted on in these special elections.

Article VI, Section 4 of the Texas Constitution provides that in all elections the vote shall be by ballot. This provision is construed to require a secret ballot, and the framework of our election procedures is built upon the concept that the voter's right to a secret ballot should be protected. The Constitution does not guarantee absolute secrecy, however, and the Legislature may determine, within limits, what the public policy of the State will be where the protection of the secrecy of the ballot comes into conflict with other considerations which are in promotion of the public interest. Thus, in an election contest the Legislature may authorize the court to permit examination of the ballots of disqualified voters, in order to deduct their votes. Whenever an election contest arises in any election where more than one office or proposition is voted on, the examination of ballots in the contest proceeding permits exposure of how challenged voters had voted in the races and issues not being contested. Nevertheless, the Legislature has expressly provided that all races shall

be placed on the same ballot in general elections and in primary elections. The public policy of the State, as declared by the Legislature, clearly does not forbid use of a ballot form which permits exposure of the uncontested portion of the ballot in general and primary elections.

The long-standing practice of placing proposed constitutional amendments on the general election ballot, where they are to be voted on at the same time, is not expressly authorized by statute, but the Legislature has sanctioned it by failing to prohibit it. This practice likewise cannot be taken as violative of public policy because of exposure which would result from a contest arising out of either the general election or the special election on the constitutional amendments.

As previously indicated, the former opinions dealing with joint elections have not been based on express statutory provisions authorizing the holding of joint elections and regulating their conduct. A few isolated statutes provide for the holding, at the same time and place, of two elections which are called and canvassed by separate authorities (e.g., Arts. 2676 and 2774b, V.C.S.), but otherwise there is no express statutory regulation of joint elections except for Article 2746c, V.C.S., which was enacted in 1959. This statute reads as follows:

"Art. 2746c. Joint elections of governing  
bodies of school districts

"Section 1. Whenever an election for members of the county board of school trustees, the board of education, board of trustees or other governing board of any school district, or the board of regents, board of trustees or other governing board of any junior college district, regional college district or other type of college district, is to be held on the same day and within all or part of the same territory as any other of the elections herein enumerated, the various officers, boards or bodies charged with the duty of appointing the election officers, providing the supplies, canvassing the returns, and paying the expenses of such

elections may agree to hold the elections jointly and may agree upon the method for allocating the expenses for the joint election. Resolutions reciting the terms of the agreement shall be adopted by each of the participating boards or bodies. The agreement may provide for use of a single ballot form at each polling place, to contain all the offices to be voted on at that polling place, or for separate ballot forms which may combine two or more of the sets of county or district offices to be voted on, provided that all of the offices and candidates for each district or political subdivision shall appear on the same ballot. One set of election officers may be appointed to conduct the joint election, and any person otherwise qualified who is a resident of either of the districts or political subdivisions holding the election shall be eligible to serve as an election officer. Poll lists, tally sheets, and return forms for the various elections may be combined in any manner convenient and adequate to record and report the results of each election, and one set of ballot boxes and one stub box may be used for receiving all ballots and ballot stubs for the joint election. Returns on joint or separate forms may be made to, and the canvass made by, each officer, board or body designated by law to receive and canvass the returns of each election, or one of such officers, boards or bodies may be designated to receive and canvass the returns for the joint election and to report the results of each election to the proper authority. Where the counted ballots for two or more of the elections are deposited in a single ballot box, the box containing the counted ballots shall be returned to the officer or board designated in the agreement, which shall be an officer or board designated by law to receive and preserve the counted ballots for one of the elections constituting a part of the joint election."

Article 2746c expressly permits use of a single ballot form and set of ballot boxes or of separate forms and boxes, at the discretion of the boards charged with the duty of furnishing the supplies. The obvious purpose of the statute is to permit the election authorities to prepare the ballots and to provide for their handling in the manner best suited to the orderly, efficient conduct of the elections. The Legislature, by the enactment of this statute, has declared the public policy of this State in joint elections with respect to the balancing of the two opposing considerations--protection of the secrecy of the ballot on the one hand and the efficient, orderly and economical conduct of the election on the other hand. If this statute had been in existence in 1940, we daresay that a different result would have been reached in Opinion O-2853.

We think there can be no question that the Legislature could validly authorize the joint conduct of these four special elections as a combined single election. We also concur in the former rulings that two or more elections may be held at the same time and place without express statutory authorization, provided the procedures comply with express statutory requirements pertaining to each election and do not violate the spirit and policy of the election laws. Where the elections are held by the same officers and are canvassed by the same authority, and the same officer has custody of the voted ballots in each election, it is our opinion that the authority charged with the duty of furnishing the supplies for the elections may determine whether separate or combined forms shall be used for the ballots, the poll and tally lists, and the returns, and, agreeably with its decision on the form of the ballot, may determine how many sets of ballot boxes shall be used.

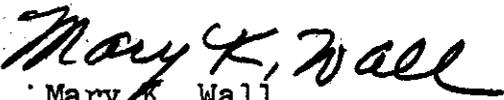
We hold that the Travis County Election Board may determine, within its discretion, whether to use a single ballot form for all matters to be voted on at the special elections to be held on November 9, 1963 (other than the junior college tax and bond propositions), or to use separate ballots for each election, or to combine the ballots for the different elections in such other manner as in its judgment will be most appropriate for the efficient conduct of the election.

SUMMARY

Where a special election for voting on constitutional amendments, a special election to fill a vacancy in the office of United States Representative, a special election to fill a vacancy in the office of State Representative, and a special election to create a county junior college district are called for the same day, the four special elections may be held jointly by the same election officers, and all the matters on which all qualified electors of the county are eligible to vote may be placed on a single ballot form.

Yours very truly,

WAGGONER CARR  
Attorney General

By   
Mary K. Wall  
Assistant

MKW:ms:sj

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman  
J. C. Davis  
C. L. Snow  
Fred Ward

APPROVED FOR THE ATTORNEY GENERAL

By: Stanton Stone